

**CHARLES A. BILES**  
Claimant

**UNITED ENGINE SPECIALISTS**  
Respondent

**NORTHWESTERN NATIONAL CASUALTY**  
Insurance Carrier

# KANSAS WORKERS COMPENSATION FUND

## ORDER

## ISSUES

- (1) Whether claimant suffered a personal injury by accident that arose out of and in the course of his employment with the respondent; and,
- (2) Whether timely notice was given.

Both of the above issues raised by the respondent are considered jurisdictional and are subject to Appeals Board review. See K.S.A. 44-534a(a)(2).

(1) Claimant claimed that he performed repetitive work activities with both of his hands and arms while working for the respondent which caused bilateral carpal tunnel syndrome. He alleged that these repetitive traumas occurred each and every day from June 1993 through September 1, 1993, the last day claimant worked for the respondent. The Administrative Law Judge in her Preliminary Hearing Order granted claimant's request for medical treatment and temporary total disability benefits, if taken off work by the authorized physician, Dr. Pollock. Respondent argued that there was no evidence presented by the claimant that the work activities he performed for the respondent caused or contributed to the claimant's bilateral carpal tunnel syndrome condition. Respondent further contended that the evidence had established that the claimant's work activities performed while working for another employer, Means Motors, Inc. (Means Motors), from June 1994 through January 11, 1995, was the cause of claimant's carpal tunnel syndrome condition, and not his work activities with the respondent.

In a workers compensation case, the claimant has the burden of proving his right to receive compensation benefits, by establishing the various conditions on which his right depends. See K.S.A. 44-501(a). This has to be accomplished by persuading the trier of fact by a preponderance of the credible evidence based on the whole record. See K.S.A. 44-508(g). Evidence in this case was presented during two hearings, one held on October 28, 1993 and the other held sixteen (16) months later on February 28, 1995. Claimant testified that he had no problems with his hands prior to being employed by the respondent. He commenced his work activities with the respondent in June 1992 which consisted of cleaning engine heads weighing fifty to seventy-five (50-75) pounds. These work activities required repetitive use of his hands and arms.

Claimant testified that problems with his hand and arms started about a month before he went to see Dr. D. H. Abbas, M.D., a neurologist, on November 23, 1992. Claimant saw Dr. Abbas on his own and paid for the examination himself. Claimant also asserted that he told the respondent of his hand and arm problems as early as one month after he started working in June 1992. This would place his first symptoms sometime in July 1992 instead of October 1992 the date that he first alleged. Dr. Abbas' impression was possible bilateral carpal tunnel syndrome with an EMG/NCT study needed. Claimant did not have an EMG/NCT study completed at that time and continued to work for the respondent doing repetitive activities until he was terminated for excessive absenteeism on September 1, 1993, not related to his hand and arm problems.

Claimant did not see a medical provider for his hand and arm problems again until the Administrative Law Judge ordered an independent medical examination of the claimant to be conducted by Anthony G. A. Pollock, M.D., an orthopedic surgeon, in Wichita, Kansas. Dr. Pollock examined the claimant on June 29, 1994, and found a positive Tinel's sign at both wrists and recommended an EMG/NCT study. In a letter dated August 30, 1994, to claimant's attorney, Dr. Pollock opined that at the time that he examined the claimant he had no objective evidence of carpal tunnel and it was hard to say whether the claimant's work aggravated the situation or caused it since he had not at that time diagnosed claimant's condition.

An EMG/NCT study was finally completed by Dr. Abbas on November 18, 1994, confirming the bilateral carpal tunnel syndrome diagnosis. As a result of that study, Dr. Pollock, after consulting with the claimant, scheduled surgery for the claimant's left hand for January 16, 1995.

After the claimant left respondent's employment in September 1993, he received unemployment compensation and then worked for a three month period operating a forklift. During that period of time, his arm and hand symptoms remained the same as they were when he was employed by the respondent.

In June 1994, claimant went to work for Means Motors and was employed there until January 11, 1995. Claimant testified that the repetitive hand and arm activities that he was required to perform at Means Motors caused his symptoms in his hands to increase. His hands swelled, pain increased and his arms locked up while he performed these work activities. Claimant testified he had more trouble with his hands and arms while he worked for Means Motors than he did while he was with the respondent. After surgery was scheduled for January 16, 1995, claimant planned on working for Means Motors until January 13, 1995. However, he terminated his employment on January 11, 1995, because his arms locked up and he could no longer continue to perform the work required.

The Appeals Board finds and concludes after reviewing the claimant's testimony coupled with the medical records submitted for preliminary hearing purposes, that the evidence in the record does not prove that it is more probably true than not that the claimant's bilateral carpal tunnel syndrome condition and need for medical treatment was due to his work activities performed while employed by the respondent. The Appeals Board does find the greater weight of the credible evidence established that claimant's repetitive work activities at Means Motors caused or at least contributed to and aggravated his bilateral carpal tunnel syndrome and the subsequent need for medical treatment. Until he worked for Means Motors, the claimant was able to work and he had gone without medical treatment for some eighteen (18) months. However, after beginning work for Means Motors, his symptoms dramatically increased and his hands swelled. Further, no positive diagnosis of bilateral carpal tunnel was made until some six (6) months after he worked for Means Motors.

(2) The Appeals Board finds also that since the claimant has failed to prove his initial claim, it is unnecessary to decide whether claimant gave timely notice as required by K.S.A. 44-520.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order of Administrative Law Judge Shannon S. Krysl, dated February 28, 1995, is reversed and the claimant is denied benefits against the respondent and its insurance carrier for alleged injuries occurring each and every day from June 1993 through September 1, 1993.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of May, 1995.

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BOARD MEMBER

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BOARD MEMBER

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**BOARD MEMBER**

- c: Chris A. Clements, Wichita, KS  
James A. Cline, Wichita, KS  
E. L. Lee Kinch, Wichita, KS  
Shannon S. Krysl, Administrative Law Judge  
George Gomez, Director